

with the applicant or its authorized representative and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment or the purchase of the land for the housing site.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14336, Apr. 11, 1989; 56 FR 2235, Jan. 22, 1991; 58 FR 38924, July 21, 1993; 58 FR 40952, July 30, 1993; 59 FR 6886, Feb. 14, 1994; 62 FR 25065, 25074, May 7, 1997]

§ 1944.212 Loan and grant purposes.

RRH and RCH loans may be made to qualified applicants to:

- (a) Construct new housing.
- (b) Purchase and rehabilitate existing buildings only when the loan for such purchase and rehabilitation does not exceed by 5 percent the loan for new construction in the same area and when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.
 - (1) All rehabilitation work to be performed must be classified as either moderate or substantial rehabilitation as defined in exhibit K of subpart A to part 1924 of this chapter.
 - (2) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the residents of the structure after rehabilitation.
 - (3) Rehabilitation must be planned and accomplished so that the resulting housing will:
 - (i) Meet the applicable development standards as provided for in § 1924.5(d)(1) of subpart A of part 1924 of this chapter and any applicable historic preservation requirements.
 - (ii) Create a suitable and appealing living environment and be substantially equivalent to new construction in quality and livability.
 - (4) The applicant must submit complete plans and specifications for rehabilitation for FmHA or its successor agency under Public Law 103-354's review and acceptance.

(5) The rehabilitated project must generally meet the provisions of § 1944.215(b) of this subpart.

(6) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) can be designated for commercial use on a lease basis. Loan funds, however, cannot be used to finance any cost associated with the commercial space. In order to determine the correct loan amount for the residential portion of such a structure, the following guidelines will apply:

- (i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.
- (ii) The costs that can be easily and appropriately identified as being part of either the commercial or residential portion of the structure should be separated.
- (iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair or renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential tenants or members will be prorated between the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.
- (iv) For the purposes of the loan limitations in § 1944.213(b) (1) and (2) of this subpart, the term *development cost* means the development costs associated with or prorated to the residential use of the structure, and the term *security value* is the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA or its successor agency under Public Law 103-354 may establish the value contributed by the commercial space.
- (v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA or its successor agency under Public Law 103-354

security requirements of § 1944.221 of this subpart.

(7) The applicant may not lease any authorized commercial space without the prior written consent of the State Director. Prior to loan closing, the advice of OGC will be obtained as to any modifications needed in the mortgage, loan agreement or loan resolution to enforce this requirement. The State Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises if FmHA or its successor agency under Public Law 103-354 withdraws its consent to the lease.

(ii) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants or member and to the use of the residential portion of the structure.

(iii) The terms of the lease and the proposed use of the leased space do not jeopardize the interests of the tenants or members of the project or the continued use of the residential portion of the structure.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with FmHA Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) With prior written approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, only when:

(i) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal au-

thority to acquire and administer the land; and

(ii) The cost of the excess land is a reasonable portion of the loan; and

(iii) The site density requirements of § 1944.215(a)(6) of this subpart are met.

(d) Develop and install streets, a water supply, and sewage disposal, heating, cooling, and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legal right to use the facility for a period of at least 25 percent longer than the life of the loan and the title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the project or funds are limited to the prorated part of the total cost of the facility according to the use and benefits to the project. The applicant will agree in writing to the application, as extra payments on the loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center when the project is large enough to justify the facility. In all projects, passive recreation (such as outdoor seating) for elderly rental projects and active facilities (such as tot lots) for family projects will be provided.

(3) Central cooking and dining in congregate and group living housing when the project is large enough to justify them to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables, should be attached to the land or buildings in a manner regarded in law as part of the real estate.

(4) Space for a small infirmary for emergency care only when justified by the size of the project. An infirmary

will not be justified if facilities for emergency care expected to be needed by the tenants are readily accessible elsewhere.

(f) Construct office and living quarters for the resident manager and other operating personnel if the facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(g) Purchase and install ranges, refrigerators, drapes, blinds/shades, drape rods, and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(h) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(i) Pay related costs such as fees and charges for market studies, tax credit application, legal (costs pertaining to the closing of the FmHA or its successor agency under Public Law 103-354 loan only), archeological, architectural, engineering, environmental, and other appropriate technical and professional services. The fees and charges may be paid to an applicant or officer, director, trustee, stockholder, member, or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned and the identity of interest is disclosed. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(j) Provide loan funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with

housing and/or community development experience, to assist it in the formation or incorporation and development and packaging of its loan docket and project, as well as legal, technical and professional fees incurred in the formation or incorporation of the applicant entity.

(1) Fees can also be provided to pay the nonprofit applicant entity for packaging of its loan docket and project, but not to include the formation and incorporation of the entity.

(2) The amount to be paid for packaging of the loan docket and project should not exceed 1% of the FmHA or its successor agency under Public Law 103-354 loan or whatever is reasonable and typical for the area.

(3) Related project costs as listed in § 1944.222 of this subpart are not included as a part of the fee for packaging of the loan docket and project.

(k) Provide loan funds to pay for the cost of educational programs for the board of directors both before and after incorporation of the cooperative.

(l) Pay construction interest as follows:

(1) In the case of multiple advances, loan funds will not be used to pay construction interest. Accrued interest during construction will be capitalized when construction is substantially complete, loan funds are fully advanced and the project is ready for full operation or when advances plus accrued interest reach the maximum debt limit (MDL). When requested by the borrower, each month the servicing official will provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) In the case of interim financed construction, interest accrued and customary charges necessary to obtain interim financing may be included in the loan amount.

(m) Purchase housing from an interim lender that holds fee simple title to an RRH project upon which construction commenced pursuant to § 1944.235(c)(1) and after issuance of a letter of commitment to the interim lender in accordance with exhibit B of this subpart, when all of the following conditions exist.

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(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown in exhibit B to this subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA or its successor agency under Public Law 103-354 issued a letter such as that shown in exhibit B to this subpart for the construction of the project.

(3) The project is substantially complete (see § 1944.235(c)(1)(vi) of this subpart), all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications and contract documents, and is in compliance with subparts A and C of part 1924 of this chapter.

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(n) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.215(t) of this subpart.

(o) Construct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural housing. Only the Administrator may authorize loan funds to be used for this purpose.

(p) Finance the conversion of section 502 units in inventory to a section 515 project, in accordance with requirements of this subpart and subpart C of part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to section 515 housing. To facilitate a cooperative's self-maintenance plan, the use of 502 inventory houses will be considered only if the units are located in the same subdivision and in a clustered configuration.

(q) Grants for advances to nonprofit corporations or public agencies for costs to develop an application pack-

age or close a loan to purchase a project to avert prepayment. Such grants shall not exceed \$10,000 and shall be administered in accordance with § 1965.217 (d) of subpart E of part 1965 of this chapter.

[53 FR 2159, Jan. 26, 1988, as amended at 54 FR 14336, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29560, July 20, 1990; 56 FR 2235, Jan. 22, 1991; 56 FR 66960, Dec. 27, 1991; 58 FR 38924, July 21, 1993; 59 FR 6887, 6897, Feb. 14, 1994; 62 FR 25074, May 7, 1997]

§ 1944.213 Limitations.

(a) *Loan limits.* The Agency must certify that assistance provided any housing project is not more than is necessary to make the project affordable to potential tenants and the Government. The applicant must disclose, during each stage of the process, all other assistance proposed for the project, including all other government assistance as defined in § 1944.205.

(1) *Fee norms.* RHS has established the fee norms below for purposes of analysis. The total of the three fees may not exceed 21 percent.

(i) Builder's profit: up to 10% of the construction contract.

(ii) General overhead: up to 4% of the construction contract.

(iii) General requirements: up to 7 % of the construction contract.

(2) *Other fee norms.* (i) RHS has established the new construction and rehabilitation fee norm for a developer's fee at up to 15% of the total development cost authorized for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(ii) For transfer proposals that include acquisition costs, RHS has established the developer's fee on the acquisition costs at up to 8% of the acquisition costs only when authorized by the state agency and only for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(3) *Analysis of loan requests to determine the minimum amount of assistance.*

(i) The fee structure of the state agency administering low-income housing tax credits will be used in the RHS analysis of the amount of assistance that is necessary for a proposal.

(ii) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than